

Office of the Inspector General of the Department of Defense

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Evaluation of Sexual Assault, Reprisal, and Related Leadership Challenges at the United States Air Force Academy

Report Summary

Who Should Read This Report and Why? Members of Congress; the Secretaries of Defense and Air Force; other senior DoD and Air Force leaders/managers; and others interested in the United States Air Force Academy (USAFA), sexual assaults, reprisal, or related leadership challenges in the military should read this report.

Background. In January 2003, the Secretary of the Air Force and Chief of Staff received allegations of widespread sexual assault problems at the Air Force Academy and immediately began an investigation. Subsequently, the news media began reporting that numerous female cadets were sexually assaulted while attending USAFA; that Air Force management generally “covered-up” the crimes and did not punish the offenders; and that female cadets were frequently punished for reporting sexual assaults. At Secretary of the Air Force direction, the Air Force General Counsel (SAF/GC) established a high-level working group, assessed complaints about USAFA processes related to sexual assault reporting, and issued a report on June 17, 2003. Based on preliminary input from the working group, the Secretary of the Air Force adopted an “Agenda for Change” and began corrective actions in May 2003. Subsequently, at congressional direction, the Secretary of Defense appointed a seven-member panel headed by former Congresswoman Tillie K. Fowler to investigate reports that at least 56 cadets had been sexually assaulted at USAFA since 1993. The Fowler Panel issued its report on September 22, 2003. Among other things, the Fowler Panel held that the Air Force Working Group may have shielded senior Air Force management from responsibility for USAFA sexual assault problems, and their accountability should be assessed. The Secretary of the Air Force has continued actions in response to both the working group and Fowler Panel reports.

On February 27, 2003, recognizing that the Secretary of the Air Force had “launched an investigation” the Chairman of the Senate Armed Services Committee requested that we “review the work being done by the Air Force and others and provide . . . findings and conclusions to us at the appropriate time. We also would ask you to be prepared to counsel us and other members of the Committee on your findings and conclusions.”

Our objectives for the review evolved over time in response to the previous studies and agreements with congressional members and the Secretary of Defense. Ultimately, we focused on: (1) quality and timeliness of criminal investigations conducted on alleged sexual assaults involving USAFA cadets over approximately 10 years beginning with 1993; (2) thoroughness and adequacy of the Air Force Working Group work, as impacted by the Fowler Panel work; and (3) factual findings associated with individual responsibility for sexual assault problems at USAFA. In accordance with the Inspector General’s statutory duty to “keep the head of [the Department of Defense] and the

Congress fully and currently informed,” between March 2003, and July 2004, we met with or wrote the Chairman or his staff more than 12 times to keep the Committee apprised on our evaluation work, as well as providing regular briefings to the Secretary of Defense. As reported to the Committee, our work included assessing “the ‘root’ causes of the cultural climate underlying the sexual assault and reprisal allegations”¹

Results. We consider the overall root cause of sexual assault problems at the Air Force Academy to be the failure of successive chains of command over the last ten years to acknowledge the severity of the problems. Consequently, they failed to initiate and monitor adequate corrective measures to change the culture until very recently.

Although we identified limited exceptions, overall, we found that the Air Force Office of Special Investigations (AFOSI) investigated alleged sexual assaults thoroughly and timely once the complaints were reported for investigation. On average, however, more than 4 months elapsed between alleged sexual assault incidents and reporting to AFOSI, which adversely impacted ability to collect physical and testimonial evidence and prepare prosecutable cases. Over the last 3 years, the delay increased to more than 7 months. The delays were inherent in the confidential sexual assault reporting program that USAFA implemented unofficially in 1993, and formalized in 1997. Our report includes recommendations to address the limited exceptions that we found in AFOSI investigative quality.

We did not find evidence that the Air Force Working Group intentionally shielded Air Force Management from having to accept responsibility for sexual assault problems at USAFA.² However, both the Air Force Working Group and Fowler Panel were subject to strict time limits and both identified areas requiring further study in completing their work. Neither study fully assessed how it was possible that AFOSI, which had independent investigative authority prescribed in statute and confirmed in both DoD and Air Force policy, was hindered in exercising its authority. AFOSI Commanders objected to the academy’s confidential sexual assault reporting process from the time they learned in early 1996, that it might be withholding crime reporting. They objected to both the USAFA Superintendent and their bosses, three consecutive Air Force Inspectors General. Further, one AFOSI Commander solicited assistance in resolving the matter from the Air Force Judge Advocate General in 1996, and from the Air Force General Counsel in 1999. However, an Air Force Inspector General, Air Force Surgeon General and Air Force Judge Advocate General had acquiesced in the Academy’s confidential reporting program in 1996, without requiring oversight to ensure the program worked. As a result, a program designed on the concept that “. . . we couldn’t tell the OSI not to investigate and that’s why we needed a system where they didn’t find out . . .” was allowed to continue for approximately 10 years.³

The AFOSI Commanders should not have allowed their objections to be ignored without elevating the matter to the Secretary of the Air Force. However, they would have had to elevate the matter through their immediate superior, the Air Force Inspector General, pitting them against their superior officer, as well as other more senior officers who were condoning and supporting the USAFA program. Our report recommends changing the current organizational structure to make the AFOSI Commander directly reportable to the

¹ May 2, 2003, Inspector General of the Department of Defense letter to Chairman, Senate Armed Services Committee.

² We did find that one working group member did not provide information on his substantial previous involvement with the issues to the working group, and another with substantial previous involvement with the issues was allowed to continue as a working group staff leader.

³ October 8, 2003, Staff Judge Advocate Interview, p. 34

Secretary of the Air Force. We also recommend that the Secretary consider increasing military rank for the AFOSI Commander to put the position on equal footing with officers confronted during criminal investigations. We believe these changes are necessary to avoid command influence and interference in future criminal investigations. We also recommend the Department consider civilianizing the AFOSI Commander position to a member of the Senior Executive Service as an alternative.

To encourage sexual assault reporting, since 1993, USAFA has had an “amnesty” program to “forgive minor infractions” that a sexual assault victim or witness commits in connection with the sexual assault. Based on an Air Force Working Group recommendation, the academy developed “assured amnesty,” generally on a blanket basis for “infractions” that are “normally addressed through cadet discipline.” The intent was to assure cadet victims, up front, that their infractions would be forgiven so they would not be discouraged from reporting sexual assaults. However, as the Fowler Panel pointed out such blanket amnesty is contrary to policy at other Service academies and could lead to false sexual assault reporting. We agree. In addition, all academy infractions are, or can become, violations under the Uniform Code of Military Justice (UCMJ), and the UCMJ already has procedures for granting “immunity” from prosecution. The USAFA amnesty program duplicates, in principle, the immunity provisions included in the UCMJ. Some USAFA officials and cadets do not recognize the distinction between amnesty granted in sexual assault cases and immunity granted in UCMJ proceedings. Furthermore, USAFA cannot expect its youthful cadets, or the USAFA officials responsible for administering the program, to know or readily comprehend all individual “infractions” that USAFA “normally addresses” through the disciplinary system. The fact that a particular infraction is normally addressed through cadet discipline does not mean that it will be in every case. Cadets, therefore, will continue to be unable to anticipate whether a particular infraction will be considered for amnesty and, since an offense could be subject to amnesty in one case but not another, USAFA will not be able to ensure consistency in rendering discipline.

Furthermore, we are concerned about an inequity inherent in the current USAFA amnesty program. Under the USAFA amnesty program, an individual accused of committing a sexual assault and ultimately not convicted could still be punished for lesser UCMJ violations in which the individual participated equally with the victim and witnesses who have been given amnesty for the same violations. Such inequitable treatment would be contrary to fundamental fairness.

The Fowler Panel recommended that the Air Force adopt a clear policy to encourage sexual assault reporting, which provides for Commandant or Superintendent determinations on a case-by-case basis. The panel indicated that the determinations should be based on advice from the Academy Response Team and the Academy Staff Judge Advocate, and should occur after carefully considering many factors. According to the panel, these factors should include (1) the circumstances surrounding the alleged sexual assault, (2) the evidence supporting the sexual assault allegation, (3) the seriousness of the victim’s reported misconduct and its relationship to the sexual assault, and (4) the need to encourage victims now and in the future to report sexual assaults. We support the recommendation. In implementing it, however, USAFA should apply the coverage to all potential infractions, recognizing that they all are or can become UCMJ violations. USAFA should also ensure that its case-by-case decisions on whether to forgive offenses do not result in disparate punishments among all cadets who participated equally in the offenses.

Our report also includes recommendations dealing with shortcomings in the USAFA Victim and Witness Assistance Program.

Beginning in 1995, the GAO, the Air Force Working Group, the Fowler Panel and various individuals, as well as internal USAFA climate surveys and our own work on this project, identified problems at USAFA that were rooted in a problematic cadet subculture manifested by an unhealthy disregard for regulations and the law, to include prohibitions regarding alcohol consumption and consensual sex in dormitories, negative male attitudes and actions toward women constituting sexual harassment and even sexual assault, and cadet order and discipline significantly below the level expected at a premier military institution funded at taxpayer expense. Our report offers recommendations, anchored to the exemplary conduct required of all commanding officers and others in authority in the Air Force (Title 10 §8583), to help sustain the Air Force's efforts to correct those problems, including an oversight mechanism.

Assessing Responsibility. While the current Secretary of the Air Force has already, by his own congressional testimony, accepted both the responsibility and accountability for the situation at the Air Force Academy -- as "the captain of the ship"⁴ -- a number of other senior officials share responsibility for the USAFA problems, including confidential sexual assault reporting program, cultural problems, and the resulting consequences. The program created a unique reporting policy at USAFA, which differed from the rest of the Air Force, without approval of the Secretary of the Air Force. While the change in policy did not cause the sexual assaults, it contributed to cultural problems, kept the magnitude of the problems from being visible to USAF leadership, and prevented effective criminal investigations. We reviewed the actions of 31 present or former Air Force officials, including Secretaries of the Air Force, Acting Secretaries of the Air Force, Chiefs of Staff of the Air Force, Air Force General Counsel, USAFA Superintendents, Commandants of Cadets, Surgeons General of the Air Force, a Judge Advocate General of the Air Force, and an Air Force attorney. Based on our review, eight Air Force officials shared responsibility for creating, contributing to, or abiding the unique sexual assault reporting program at USAFA and the resulting problems. Conversely, 21 senior officials were not responsible for the problems. When informed of the problems, they took appropriate action. For current (2003-2004) leadership, they took aggressive action from the time of the January 2003 notification of the problems. Recent evidence, that some senior officials may have been notified of sexual assault issues as early as July 2002, is still being assessed and could affect the conclusions regarding one or more of those senior officials. Of course, those ongoing investigative activities could also turn up new evidence concerning any other officer, whether in the civil service or uniformed service, associated with the Air Force's response to sexual assault problems at the United States Air Force Academy. However, we do not anticipate that the ongoing activity will affect the systemic findings or recommendations in this report.

Two Air Force legal officers were involved in reviewing the USAFA sexual assault policy and taking actions in connection with that policy. In accordance with 10 U.S.C. 140 and DoD Directive 5145.1, *General Counsel of the Department of Defense*, the DoD General Counsel is responsible for determining whether legal representatives within the Department adhere to appropriate legal and ethical standards. Information on the two

⁴ Testimony of The Honorable James G. Roche, Secretary of the Air Force, before the Senate Armed Services Committee, September 30, 2003, at page 68:

"[Chairman] WARNER: Well, . . . if the old man, the captain is in the bunk getting needed rest and the ship goes aground, he accepts the accountability and the responsibility.

"[Secretary] ROCHE: Yes, sir.

"[Chairman] WARNER: And I think you're stepping up to that.

"[Secretary] ROCHE: . . . I am the captain of the ship."

legal officers' involvement in the USAFA confidential sexual assault reporting program and potential responsibility for the resulting problems is being referred to the DoD General Counsel for determination.

Recommendations.

1. We recommend that AFOSI increase management oversight to ensure that AFOSI investigators who conduct sexual assault investigations complete all investigative steps necessary to thoroughness in the investigations. The basis for omitting any logical investigative step in the investigations should be documented in the investigative file.
2. The Air Force modify the current organizational structure and require the Commander, Air Force Office of Special Investigations, to report directly to the Secretary of the Air Force. The Air Force should also consider increasing the military rank for the AFOSI Commander, or as an alternative, civilianize the position in the Senior Executive Service to ensure that rank is not a factor in future attempts to influence AFOSI independence.
3. The Air Force modify the current United States Air Force Academy sexual assault program to ensure an AFOSI criminal investigator is included in initial victim contacts. If USAFA wants a former AFOSI criminal investigator (without law enforcement authority or investigator credentials) on staff to assist with complaint responses and training programs, USAFA should establish such a position directly, but should not advertise the person as an AFOSI agent if the AFOSI Commander does not rate the person's job performance.
4. The Superintendent, United States Air Force Academy, revise the current amnesty program based on the Fowler Panel recommendation detailed in this report. In implementing the Fowler Panel recommendation, USAFA should apply the recommendation to all offenses, recognizing that virtually all cadet infractions are or could become UCMJ violations.
5. The Superintendent, United States Air Force Academy, in considering amnesty for sexual assault victims and witnesses on a case-by-case basis, ensure that the decision(s) do not result in disparate punishments for equal infractions and afford fundamental fairness to all individuals involved in the infractions.
6. The Superintendent, United States Air Force Academy, reassign responsibility for the USAFA Victim and Witness Assistance Program to the USAFA Staff Judge Advocate (now the consolidated Academy/10th Air Base Wing legal office), the official already designated as the Local Responsible Official (LRO) for the program.
7. The Superintendent, United States Air Force Academy, revise and reissue USAFA Instruction 51-201, "Cadet Victim/Witness Assistance and

Notification Procedures,” to comply with the DoD Victim and Witness Assistance Program and the Air Force-wide policy implementing that program. The revised policy should:

- a. identify all off-base victim support services/resources so personnel responsible for informing and supporting sexual assault victims are able to do so consistently;
 - b. designate responsibility for program oversight; and
 - c. require periodic reviews to ensure program success.
8. The Air Force Inspector General and the United States Air Force Academy Inspector General periodically inspect the USAFA Victim Witness Assistance Program to ensure continuing compliance with DoD and Air Force-wide requirements.

The Superintendent, United States Air Force Academy, take the following actions:

9. Work with other Service Academy Superintendents and the Office of the Under Secretary of Defense (Personnel and Readiness) to formulate a single survey instrument and testing protocol that can be administered to cadets and midshipmen periodically to measure cultural changes and adherence to core values; upon completing each such survey, brief the Service Secretaries and the Inspector General of the Department of Defense on the results.
10. Increase command attention to eliminating alcohol consumption, prohibited consensual sex, and use of government equipment for pornography at the United States Air Force Academy, thereby furthering good order and discipline among cadets.
11. Ensure that orientation training for cadets includes effective training on clear standards for sexual interaction so all cadets understand clearly the boundaries, penalties for crossing them, individual leadership responsibilities, and reporting options.
12. Maintain a heightened level of command attention aimed at eliminating sexual harassment and negative attitudes toward women at the United States Air Force Academy.
13. Review current admissions criteria and consider adopting changes that emphasize core values as a part of the whole person concept, along with current measures, such as aptitude scores, grades, athletics, and extracurricular activities.
14. Implement Title 10 U.S.C. § 8583 requirements for exemplary leadership behavior into the cadet curriculum and disciplinary system to ensure that

graduates possess and enforce the leadership traits essential for future leaders of the United States Air Force.

We will recommend in separate correspondence that the other Service Academy Superintendents consider the above recommendations as well.